

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-998V

Filed: November 1, 2006

Not for Publication

KIM SCHIRMER-GUZMAN and ADOLFO
GUZMAN, legal representatives for
BRIANNA GUZMAN,

Petitioners,

V.

SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Respondent.

James M. Pagliuca, Esq., Gill & Chamas, LLC, Woodbridge, New Jersey, for petitioners.

James A. Reistrup, Esq., United States Department of Justice, Washington, D.C., for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

GOLKIEWICZ, Chief Special Master.

On December 14, 1999, petitioners filed a claim for compensation under the National Vaccine Injury Compensation Program² for injuries allegedly sustained by their daughter,

¹Because this Decision contains a reasoned explanation for the special master’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Therefore, as provided by Vaccine Rule 18(b), each party has fourteen (14) days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. *Id.*

²The National Vaccine Injury Compensation Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-10 *et seq.* (West 1991 & Supp. 2002) (hereinafter “Vaccine Act” or “the Act”). Hereafter, individual section references will be to 42 U.S.C.A. § 300aa of the Act.

Brianna, from the diphtheria-pertussis-tetanus vaccine that she received on January 24, 1999. On July 20, 2005, the undersigned issued an Entitlement Decision in the above-captioned case finding that petitioners, on behalf of their daughter, were entitled to compensation as they demonstrated that the encephalopathy suffered by their daughter was presumptively caused by the vaccine. A Decision on damages was subsequently issued by the undersigned on March 13, 2006.

On August 8, 2006, petitioners filed a “Petition of Reimbursement of Costs and Compensation for Services Rendered.” In this petition, petitioners request an award of attorneys’ fees in the amount of \$259,675.00 as well as \$68,375.00 in costs. Respondent orally indicated that he had objections and that petitioners would be filing an amended petition for fees and costs.

Subsequently, petitioners’ filed an amended petition on September 6, 2006. See “Petition of Reimbursement of Costs and Compensation for Services Rendered,” filed September 6, 2006 [hereinafter “Amended Pet.”]. In the Amended Petition, petitioners request attorneys’ fees in the amount of \$251,675.00 and costs of \$68,375.00. In compliance with General Order #9, petitioners also filed an affidavit indicating that “all costs were borne by the Law Office of Gill & Chamas in this matter.” Certification by Petitioners in Support of the Petition of Reimbursement of Costs and Compensation for Services Rendered, filed September 5, 2006. Respondent indicated that he had no objections to the Amended Petition.

On September 25, 2006, the undersigned’s staff attorney contacted the parties to inquire about several items listed in the costs section of the Amended Petition. Petitioners subsequently filed a new petition for costs on September 29, 2006. See “Notice of Filing of Petitioners’ Client Ledger,” filed September 29, 2006 [hereinafter Amended Costs Pet.]. Petitioners request that they be awarded \$65,829.19 in costs. Amended Costs Pet. at 3. Respondent orally informed the undersigned’s staff attorney that he has no objections to this Amended Costs Petition. The case is now ripe for Decision.

The undersigned has examined petitioners’ Amended Petition and Amended Costs Petition in detail. The undersigned finds that the attorneys’ fees requested are reasonable in light of the voluminous record, numerous witnesses, as well as the excellent quality of the representation provided by petitioners’ counsel. Thus, petitioners are awarded the full amount requested.

With respect to costs requested, the undersigned has also examined the Amended Costs Petition. As with attorneys’ fees, the reasonableness requirement also applies to costs claimed for reimbursement. Perreira v. Secretary of Health and Human Services, 27 Fed. Cl. 29, 34 (1992), aff’d, 33 F.3d 1375 (Fed. Cir. 1995). Moreover, “[i]t is petitioners’ burden to substantiate costs expended with supporting documentation such as receipts, invoices, canceled checks, etc.” Ceballos v. Secretary of Health and Human Services, No. 99-97V, 2004 WL 784910 at *13 (Fed. Cl. Spec. Mstr. Mar. 25, 2004); see Barnes v. Secretary of Health and Human Services, No. 90-1101V, 1999 WL 797468 at *7 (Fed. Cl. Spec. Mstr. Sept. 17, 1999).

A petitioner, however, is only required to provide “reasonably specific documentation.” Ceballos, 2004 WL 784910 at *13 (citing Comm. Heating & Plumbing Co., Inc. v. Garrett, III, 2 F.3d 1143, 1146 (Fed. Cir. 1993)). With these standards in mind, the undersigned evaluates the costs petition filed on September 29, 2006.

First, the undersigned notes that it is well-settled law under the Program that United States Court of Federal Claims Bar membership fees and related expenses are not compensable. Ceballos, 2004 WL 784910 at * 15 (citing Rasmussen v. Secretary of Health and Human Services, No. 91-1566V, 1996 WL 752289 at *2 (Fed. Cl. Spec. Mstr. Dec. 20, 1996); Velting v. Secretary of Health and Human Services, No. 90-1432V, 1996 WL 937626 at *4 (Fed. Cl. Spec. Mstr. Sept. 24, 1996); Borger v. Secretary of Health and Human Services, No. 90-1066V, 1993 WL 540817 at *1 (Fed. Cl. Spec. Mstr. Dec. 16, 1993); Winters v. Secretary of Health and Human Services, No. 91-4 V, 1993 WL 114646 at *1 (Fed. Cl. Spec. Mstr. Apr. 1, 1993); Gonzales v. Seseetary of Health and Human Services, No. 91-905V, 1992 WL 92200 at *4 (Fed. Cl. Spec. Mstr. Apr. 10, 1992); Huston v. Secretary of Health and Human Services, No. 88-77V, 1990 WL 293377 at *2 (Fed. Cl. Spec. Mstr. Sept. 18, 1990)). Thus, the costs claimed on page 2 of the “Client Ledger” relating to bar membership expenses shall be deducted from the total costs claimed. More specifically, \$50.00 paid to “Clerk, U.S. Court of Federal Claims” for “Guzman v. U.S.A – 11142,” will be deducted.³ Similarly, the \$10.00 fee paid to the “Secretary, Board of Bar Examiners” for “Admission to Federal Court” is also not compensable. Thus, the undersigned will deduct \$60.00 from requested costs.

Petitioners likewise have not justified a cost on page 3 of the client ledger to the “Clerk, Superior Court” relating to an “Order to Show Cause” for \$230.00. The undersigned cannot award a cost that is not related to proceedings in the Program, and petitioners have provided no explanation as to how this cost relates to the Program. Thus, the undersigned will deduct this expense from the total costs claimed in the Amended Costs Petition.

³The undersigned confirmed with the Chief Deputy Clerk of Court for Operations that this was the Bar admission fee for attorneys in 2002.

Accordingly, the undersigned finds that attorneys' fees in the amount of \$251,675.00 and costs in the amount of \$65,539.19 are reasonable. An award of **\$317,214.19** shall be made payable jointly to petitioners and their attorneys.⁴ The Clerk shall enter judgment accordingly.⁵

IT IS SO ORDERED.

Gary J. Golkiewicz
Chief Special Master

⁴This amount is intended to cover all legal expenses. This award encompasses all charges by the attorney against a client, "advanced costs," as well as fees for legal services rendered. Furthermore, 42 U.S.C. § 300aa-15(e)(3) prevents an attorney from charging or collecting fees (including costs) which would be in addition to the amount awarded herein. See Beck v. Secretary of Health and Human Services, 924 F.2d 1029 (Fed. Cir. 1991).

⁵Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a U.S. Court of Federal Claims Judge.